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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 MARIO LOPES BENITEZ,

10 *Petitioner,*

11 vs.

12 E.K. MCDANIEL, *et al.*,

13 *Respondents.*  
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3:08-cv-00543-ECR-VPC

ORDER

16 This represented habeas action under 28 U.S.C. § 2254 is before the Court on  
17 respondents' motion (#26) to dismiss, which raises defenses of untimeliness of the *pro se*  
18 original petition and of relation back of the claims in the counseled amended petition.  
19 Following review, the Court concludes that an evidentiary hearing should be held as to all  
20 tolling issues raised in the briefing.

21 IT THEREFORE IS ORDERED that this matter shall be placed on calendar in  
22 Courtroom 3 at 10:00 a.m. on Tuesday, March 15, 2011, at the Bruce R. Thompson United  
23 States Courthouse and Federal Building, 400 South Virginia Street, Reno, Nevada, for an  
24 evidentiary hearing as to all factual issues pertaining to the tolling issues raised in connection  
25 with the respondents' motion (#26) to dismiss.

26 IT FURTHER IS ORDERED that no later than **fifteen (15) days** prior to the hearing,  
27 petitioner's counsel shall submit a **prisoner transport order** to secure petitioner's presence  
28 at the hearing; and any party wishing to call any other prisoner to testify similarly shall submit

1 an order to transport prisoner by that date. No continuance will be granted for failure to  
2 secure the attendance of the petitioner or any other prisoner unless an order to transport  
3 prisoner was timely sought.

4 IT FURTHER IS ORDERED that, **on the morning of the day of the hearing**, if any  
5 exhibits are to be offered in connection with the evidentiary hearing, counsel for any party  
6 seeking to introduce exhibits shall provide the Courtroom Deputy with four binders or sets of  
7 **exhibit binders**, with one such binder or set of binders containing counsel's exhibits for  
8 introduction at the hearing, and the other three binders or sets being for the bench, the  
9 witness stand, and the staff attorney. Each counsel additionally shall provide one additional  
10 binder or set of binders to opposing counsel. If joint exhibits are submitted, counsel shall  
11 make arrangements between themselves similarly to provide the Courtroom Deputy with four  
12 binders or sets of exhibit binders containing the joint exhibits.

13 No other date-certain pre-hearing procedures or memoranda are required at this time.  
14 If a request is made, counsel shall advise opposing counsel telephonically or through other  
15 prompt means (e.g., fax or e-mail) as to the witnesses and/or exhibits that counsel in good  
16 faith then reasonably anticipates presenting at the hearing. The Court further anticipates that  
17 the hearing will take no more than a day, and likely less, to complete. If, in the course of their  
18 preparation, either counsel comes to the conclusion that more than two hours will be  
19 necessary to present their respective side of the case, counsel shall promptly advise the  
20 Courtroom Deputy and opposing counsel.

21 DATED: February 14, 2011

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23 Handwritten signature of Edward C. Reed in black ink.

24 EDWARD C. REED  
25 United States District Judge  
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